

Present were: Anderson (Chair); McDonough (Clerk); Jeton, Brown, Batchelder (Members); Magenheim (Associate Member).

The meeting opened at 7:05 p.m.

Petition No.: 1924

Premises affected: Andover Business Park Dr

Petitioner: Riverview Commons

Members: Anderson, McDonough, Brown, Batchelder, Jeton

Attorney Mark Johnson represented the petition. Also present was Rick High, representing the management company. Johnson waived the reading of the public hearing notice and gave an overview of the proposed change concluding that his clients are not willing to voluntarily accept to change some of the units to affordably restricted units in order to construct the requested parking garages. The Board discussed that this project was built pursuant to a comprehensive permit with conditions, among them a minimum number of parking spaces, and continues to exist pursuant to the comprehensive permit. The question is whether the Board can allow something not otherwise allowed. Johnson pointed out that the reduction in parking spaces is 12 and that the buildings comply with ID District setbacks. There is no increase in the impervious area. Brown made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. The request is to modify the comprehensive permit & settlement agreement of 12/17/87 relative to the minimum number of required parking spaces. Brown suggested that despite none of the units being affordable, this request is only one element of the project. He feels it continues to be a benefit because the use is not otherwise allowed in that district. Anderson made a motion to deny the requested relief on the grounds that this project was initially developed pursuant to a comprehensive permit and a settlement agreement dated December 17, 1987. The settlement agreement was, and is now, an enforceable document limiting the number of parking spaces and requiring a certain number of parking spaces on the property. None of those spaces were proposed to be within buildings, none of those spaces were allowed to be within buildings. At this time the applicant proposes to decrease the number of required spaces pursuant to the permit and the settlement agreement and to construct two new additional buildings on the site that are not allowed in the zoning district, because the entire project is not allowed in the zoning district but for the comprehensive permit. The comprehensive permit itself was intended to enhance the affordable units in the Town of Andover. It required 25% of the units to be affordable, 25% of those units were affordable and as a result the Town was able to count 100% of the units in a rental project toward its subsidized housing inventory. However, there are currently no affordable units within the project. And as such, the comprehensive permit no longer has any provision for allowing any contribution to the regional need for affordable housing and the comprehensive permit no longer provides a justification to allow something to take place on this site that is not allowed in the underlying zoning district and that is a material change to the existing development on the property. The Board asked respectfully for the developer to consider restricting a number of units within the project to be affordable going forward so that there would be some affordable housing justification to allow a deviation from zoning that would not otherwise be allowed. The applicant has denied that. Accordingly, this motion would deny the request for the grounds stated. Batchelder seconded the motion. Brown added that the two proposed structures are accessory to the primary use, but the primary use is not allowed except by virtue of the comprehensive permit. Anderson stated that there is no nexus between the comprehensive permit and affordable units. There are none. There is no justification to allow intensified residential use of the site in the form of more building footprint and to allow a deviation from the required number of parking in the permit that they purport to rely on when there is no contribution whatsoever to the Town's subsidized housing inventory. The Board voted (5-0) to deny the requested relief.

Petition No.: 3985

Premises affected: 200 Andover St

Petitioner: 200 Andover Street LLC

Members: Anderson, Brown, Jeton, McDonough, Batchelder

 The Hall, 2nd Floor, Memorial Hall Library, 2 N. Main Street, Andover

This is a continued public hearing. Ms. Jones waived the reading of the public hearing notice. She summarized her request for a variance for the side and rear setbacks for a 3600 square foot addition. The plan has been revised to reflect that the easterly setback will be the same as the existing building (on the lot line) and the rear setback requirement of 15' will be met. The revised plans were submitted for the record. Screening for the rear abutter at 6-8 Dale Street will be provided in the form of 10' arborvitae. The Ballardvale Historic District Commission (BVHDC) has reviewed & approved the design, with the request to remove one of the handicap parking spaces, leaving 22 in total. Anderson asked about what would happen if the transformer referred to in the BVHDC email was removed. Jones stated that it is not in use & can be removed along with the fencing. If not removed, the courtyard will be maintained & fencing would be moved to a different location on site. The Board discussed the potential use of the building as well as whether Ms. Jones will retain ownership of it. Jones indicated that the building is for sale or lease & may become a restaurant. She explained that she needs to get the permit to be able to get a tenant in order to obtain financing for the addition. Jeton asked for the hardship. Jones explained that the existing building, constructed in 1870 with the rear wall right along the lot line on an irregularly shaped lot. It is impossible to meet the 15' required setback on that side. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Anderson made a motion to approve the variance to construct the two story addition in substantial conformance with the plan dated 4/19/2012 entitled "Site Layout Plan" prepared by Merrimack Engineering Services. Brown amended the motion to grant the requested variance from Article VIII, §4.1.2 to the easterly lot line. Anderson accepted the amended motion & Batchelder made a motion to approve the variance, as amended. Brown seconded the amended motion. Brown commented that the historic character & shape of lot present a hardship as well. Anderson added that under the statute, the historic placement of the structure on an oddly shaped lot contributes to the hardship. The Board voted (5-0) to grant the variance. McDonough will write the decision referencing the 4/19/12 plans & elevations received 4/20/12 and the variance to the easterly lot line.

Petition No.: 3989

Premises affected: 89 Main St

Petitioner: Fisichelli's Pastry Shop

Members: Anderson, Brown, Jeton, McDonough, Batchelder, Magenheimer

Attorney Peter Caruso, Sr., with offices at 68 Main St., represented the applicant. He waived a reading of the public hearing notice. His client, Fisichelli's Pastry Shop, is applying for a special permit to allow a fast-food restaurant with take-out. The bakery products will be produced in the main bakery in Lawrence. The Andover site will be retail only with some tables & a take-out window in the archway. This will be an improvement to the neighborhood and not a detriment. The Board discussed the differences & similarities of this business and the existing Dunkin Donuts in the same complex. While there will be some coffee and bread sold, primarily the product consists of pastry, by the piece or box, with increased business around the holidays. Additionally, they sell wedding cakes that are prepared in Lawrence. There is no sit-down, table service. A female member of the public spoke in support. The Board discussed previous cases where special permits were issued based on a specific menu, only to have the menu expanded. Caruso informed the Board that the lease restricts his client to bakery & related products only. Nina Fisichelli gave an overview of the products she sells: cookies, cakes, éclairs, and pastries. The deliveries will be off hours; in the early morning and late night. Once the space is stocked, the frequency will decrease (not daily). McDonough made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to close the public hearing. Batchelder sat of the remainder of the hearing. The Board then proceeded to deliberate. The Board discussed whether the proposed use is a retail sales establishment more than a fast food establishment. Anderson suggested making the special permit personal to the applicant & use or making it unique to the property / applicant. There was some concern about setting precedent. The Board asked the applicant's attorney to submit a description. The Board also discussed that this location would generate more foot traffic as opposed to vehicular traffic. Anderson made a motion to approve a special permit under Article VIII, §3.1.3.C.12.b to operate a bakery in the premises located at 89 Main Street, Andover, substantially as shown on the plan

submitted this evening (entitled 'retail rental area'), a pastry shop & incidental food products (i.e. coffee, tea, cappuccino, cakes) primarily drawing Main Street foot traffic with no drive-thru or drive-in component made personal to Fisichelli's Pastry Shop, Inc. such that it does not evolve over time into a substantially different food establishment other than allowed. Anderson made a motion, seconded by Jeton, to reopen the public hearing to submit a brief description of the facility. The board then continued deliberation. The Board voted (5-0) to grant the special permit. Jeton will write the decision.

Petition No.: 3740

Premises affected: 69 North Street

Petitioner: 69 North Street LLC / Northfield Commons

Members: Anderson, McDonough, Brown, Batchelder, Jeton

David Murray, representative of 69 North Street LLC appeared to request an insubstantial change in the comprehensive permit decision (#3740) that requires landscaping to be installed on the abutter's property at 4 Webster Street to include a stone wall, fencing or bushes per condition #44. The stone wall is in place. The abutters have informed him that they do not want a fence or bushes. Mr. Murray explained that he doesn't want this complication to hold up the issuance of certificates of occupancy for the first units that are already sold. This minor change does not affect the project since it is off-site work. The Board clarified that the requested insubstantial change is to eliminate the condition that requires a fence to be installed on the abutters' property and the location of bushes. Batchelder made a motion to allow the minor modification as an insubstantial change to Comprehensive Permit #3740 to allow the applicant to either proceed with the approved fence / landscaping or proceed without a fence, &/or with relocated landscaping substantially of the type and number shown on the plan regarding 4 Webster Street as may be agreed upon by the abutter. Brown seconded the motion noting that it does not address the problem regarding issuance of certificates of occupancy. Anderson amended the motion to modify condition #44 to allow the Building Inspector to grant occupancy permits for 6 units, one affordable, prior to the completion of said landscaping. Batchelder made the amended motion and the Board voted (5-0) (Magenheim abstained) to approve the insubstantial change. Batchelder will write the memo.

Discussion Item: electronic circulation of documents/ correspondence between / amongst Board members must be done through the administrative secretary only, and must not be copied to any other board member.

Brown noted some amendments to the minutes of April 5, 2012. McDonough made a motion to approve the amended minutes of 4-5-12. Batchelder seconded the minutes and the Board voted (5-0) to approve the amended minutes of 4-5-12.

Jeton made a motion to adjourn the meeting. McDonough seconded the motion and the Board voted unanimously to adjourn the meeting. The Board then adjourned the meeting at 8:40 p.m.